

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

REC'D TN  
REGULATORY AUTH.

**IN RE:**

SEP 8 PM 4 32

**APPLICATION OF MEMPHIS NETWORKX, LLC  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY TO PROVIDE INTRASTATE  
TELECOMMUNICATION SERVICES AND JOINT  
PETITION OF MEMPHIS LIGHT GAS & WATER  
DIVISION, A DIVISION OF THE CITY OF  
MEMPHIS, TENNESSEE ("MLGW") AND A&L  
NETWORKS-TENNESSEE, LLC ("A&L") FOR  
APPROVAL OF AGREEMENT BETWEEN MLGW  
AND A&L REGARDING JOINT OWNERSHIP OF  
MEMPHIS NETWORKX, LLC.**

OFFICE OF THE  
EXECUTIVE SECRETARY

**DOCKET NO. 99-00909**

**TIME WARNER COMMUNICATIONS OF THE MID-SOUTH'S, TIME  
WARNER TELECOM OF THE MID-SOUTH, L.P.'S AND THE TENNESSEE  
CABLE TELECOMMUNICATIONS ASSOCIATION'S REQUEST TO  
CONTINUE HEARING**

Comes now, Time Warner Communications of the Mid-South, Time Warner Telecom of the Mid-South, L.P. and the Tennessee Cable Telecommunications Association ("Intervenors"), and moves the Authority for an order to continue the hearing in this matter until such time as the Applicant, Memphis Networkx, and the Joint Petitioners, A&L Networks-Tennessee, L.L.C. and Memphis Light Gas & Water, produce certain documents ordered to be produced by the Directors during the July hearing. Counsel for the Intervenors would show that as of the filing of this motion, the documents have not been produced and counsel is advised that such documents may not be produced until Monday, September 11, 2000 at the commencement of the hearing. During cross-examination of Alex Lowe, he admitted that Arthur D. Little had performed market research for him early in 1998. By letter dated April 17, 1998, Mr. Lowe referenced a seventeen page

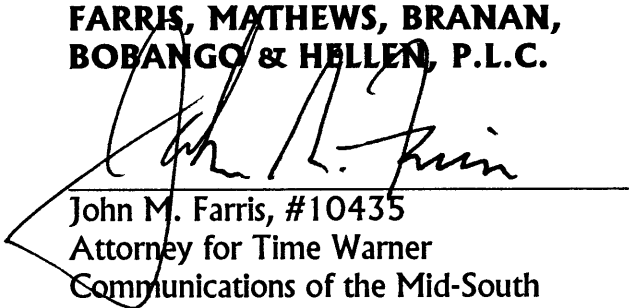
**POSTED**  
9-11-00

prior consultant's report and a two page overview. To date, the market research/study, prior consultant's report and two page overview have not been produced or confirmed that they do not exist. In addition, the Authority ordered the Applicant and Joint Petitioners to produce all Arthur D. Little contracts and records of payment. To date, these documents have not been produced. Attached hereto are excerpts from the transcript where the Applicant and Joint Petitioners were ordered to produce the documents. Counsel would show that the hearing scheduled for Monday morning is to commence with the cross-examination of Alex Lowe. Counsel would show that the documents ordered to be produce are essential to counsel's preparation for the cross-examination of Mr. Lowe, and that the inability to review such documents will make it impossible to adequately prepare for and conduct, to conclusion, the cross-examination of Alex Lowe.

WHEREFORE, the Intervenor move the Authority for an Order continuing the hearing until such time as the documents have been produced as Ordered.

Respectfully submitted,

**FARRIS, MATHEWS, BRANAN,  
BOBANGO & HELLEN, P.L.C.**



John M. Farris, #10435  
Attorney for Time Warner  
Communications of the Mid-South  
Time Warner Telecom of the  
Mid-South, L.P. and  
the Tennessee Cable  
Telecommunications Association  
618 Church Street, Suite 300  
Nashville, Tennessee 37219  
(615) 726-1200

**CERTIFICATE OF SERVICE**

I, John M. Farris, hereby certify that I have served a copy of the foregoing **document** on the parties listed below, by depositing copy of same in the U.S. Mail, postage prepaid or by hand delivery, as designated below, this the 8th day of September, 2000.

D. Billye Sanders, Esquire  
Waller Lansden et al.  
511 Union Street, Suite 2100  
P.O. Box 198966  
Nashville, TN 37219-8966  
-Served Via Facsimile

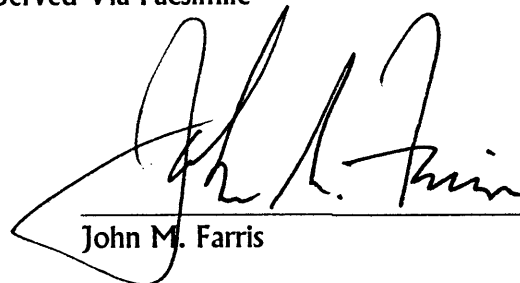
Guy M. Hicks, Esquire  
BellSouth Telecommunications, Inc.  
Suite 2101  
333 Commerce Street  
Nashville, TN 37201  
-Served Via Facsimile

John Knox Walkup, Esquire  
Wyatt, Tarrant & Combs  
511 Union Street, Suite 1500  
Nashville, TN 37219  
-Served Via Facsimile

R. Dale Grimes, Esquire  
Bass, Berry & Sims, P.L.C.  
2700 First American Center  
Nashville, TN 37238  
-Served Via Facsimile

Lee J. Bloomfield, Esquire  
Allen, Godwin, Morris,  
Laurenzi & Bloomfield, P.C.  
200 Jefferson Avenue, Suite 1400  
Memphis, TN 38103  
-Served Via Facsimile

Vance L. Broemel, Esquire  
Assistant Attorney General  
Consumer Advocate Division  
Cordell Hull Building, 2nd Floor  
425, 5th Avenue North  
Nashville, TN 37243-0500  
-Served Via Facsimile

  
John M. Farris

1 a prior consultant's report.

2 CHAIRMAN KYLE: But you're saying had  
3 you seen this document, you would have --

4 MS. SANDERS: No. What I'm saying --

5 CHAIRMAN KYLE: -- turned over --

6 MS. SANDERS: -- is it doesn't exist  
7 anyway. I mean, MLGW doesn't have -- let me just put  
8 it this way. MLGW had not written a consultant's  
9 report and MLGW had not hired A.D.L., Arthur D. Little,  
10 to do a report for them. So they didn't have a  
11 consultant's report.

12 CHAIRMAN KYLE: All right. That's  
13 fair. Thank you for responding. I'll be a little bit  
14 more careful about cutting you off. That's very kind  
15 of you. Mr. Farris?

16 MR. FARRIS: Am I to respond to  
17 Ms. Sanders?

18 CHAIRMAN KYLE: Yes, sir.

19 MR. FARRIS: I think General Walkup  
20 has talked about many times that they have delivered  
21 over 5,000 pages to us. And I, frankly, just find it  
22 really hard to believe that these papers have not been  
23 provided to us.

24 You know, I don't know where they are  
25 or what they say, but I frankly think we've asked for

1 them. We've asked for them more than one time and in  
2 more than one forum, and in the depositions, I think.

3 We should have received these reports.  
4 And I, frankly, think they exist. And I don't -- I  
5 don't know, but this letter seems to indicate that  
6 there's a report that exists.

7 CHAIRMAN KYLE: Mr. Farris and  
8 Ms. Sanders, I tell you what, everyone in here has  
9 shown this Court great respect. We're not questioning  
10 anyone's ethics here. There could be a variety of  
11 reasons why these reports were not done.

12 Now, as I understand it, Mr. Farris  
13 has asked for these more than one time. We're not  
14 going to go back and question his questions.

15 Ms. Sanders, both you and General  
16 Walkup have stated that if you had these documents, you  
17 would be glad to turn them over. I think we ought to  
18 make a diligent effort to find them and turn them over.  
19 If we don't, that leaves a lot of people to guess the  
20 sequence of events. We're not going to get any further  
21 with arguments.

22 MR. FARRIS: And I don't mean to -- I  
23 really do not -- and I said this before. I do not mean  
24 to say at all that Ms. Sanders or General Walkup have  
25 not provided something to me.

1 CHAIRMAN KYLE: Right.

2 MR. FARRIS: Not at all. I do not  
3 mean to say that. And it may -- they may have just  
4 been overlooked. I wanted to make that statement.

5 CHAIRMAN KYLE: The Court's going to  
6 request these. And let's -- I would like to request  
7 these and let's get 'em in. And if you don't, you  
8 know, that goes to your side of the case. It may be  
9 good, bad, indifferent. I'm not weighing this until I  
10 have everything in front of me.

11 MS. SANDERS: Could we let  
12 Mr. Thompson --

13 CHAIRMAN KYLE: Not at this time, I  
14 tell you what, because I'm not going to tell a lawyer  
15 how to run his case, and this is his time. And then  
16 we'll take up your request in just a minute. But I  
17 want to be as fair to him as we tried to be for you  
18 yesterday.

19 Mr. Farris, let's get back on point --

20 DIRECTOR GREER: May I say one thing  
21 before we move on? Mr. Walkup, I want to make sure you  
22 understand. I want to comment on what Mr. Farris said  
23 to you. I have the utmost respect for both you and  
24 Ms. Sanders. You cannot produce what is not given to  
25 you to produce. I fully understand that.

1                   There is no question in my mind about  
2 the ethicality and the standards that you represent.  
3 know you, Mr. Walkup, and I know Ms. Sanders, and I've  
4 got the utmost respect for both of you.

5                   The fact remains that we, in the long  
6 run, have to make a decision based on several criteria  
7 and part of that is public interest, part of it may lie  
8 in the credibility of the witnesses.

9                   A public records request is one thing.  
10 A document request is another issue. And document  
11 requests have been made and have not, obviously, been  
12 delivered.

13                   I don't honestly, Mr. Walkup, believe  
14 that these two documents have just disappeared into  
15 thin air. Now, they are either in the files, and  
16 Mr. Farris and Mr. Welch and Mr. Whitten just haven't  
17 been able to find them, or they haven't been delivered.  
18 And with all the other stuff that they have found that  
19 has somewhat amazed me at times, I doubt very seriously  
20 if it got by them.

21                   So there is a credibility issue as it  
22 relates to those who are applying. And Director Malone  
23 said Monday morning when we started, there is a price  
24 to pay for coming into the public arena to partner in  
25 with a public agency that is regulated.

1                   And whether Mr. Lowe has these  
2 documents, or ever had 'em, or whatever, at one time he  
3 obviously had them.

4                   And I think I said to you, all the  
5 people in this room, several months back when we were  
6 going through these document requests, I said when  
7 people start acting like they don't want to deliver  
8 something, I have to wonder what it is they don't want  
9 to deliver.

10                  And I believe my comment was, bring it  
11 all in and we'll decide what's relevant and what's not.  
12 That's the end of my comment. That's it.

13                  CHAIRMAN KYLE: Let's continue  
14 cross-examination of this witness.

15                  MR. FARRIS: I would like to mark this  
16 as the next exhibit.

17                  CHAIRMAN KYLE: I have no doubt you  
18 gave one to the court reporter. I believe this is  
19 Exhibit 44. I stand to be corrected. Until that time,  
20 we're going to give it 44. I am on line. I see the  
21 lawyers confirming that's where we are.

22                               (Marked Exhibit 44.)

23 BY MR. FARRIS:

24 Q.               Mr. Lowe, do you remember what these  
25 reports said? Do you remember what either one of these



1 CHAIRMAN KYLE: Consumer Advocate's  
2 office?

3 MR. BROEMEL: No, we're fine.

4 CHAIRMAN KYLE: BellSouth?

5 MR. TURNER: No, ma'am.

6 CHAIRMAN KYLE: Time-Warner?

7 MR. WELCH: No. Thank you.

8 CHAIRMAN KYLE: All right.

9 Commissioner Malone would like to address you before  
10 you leave the room.

11 DIRECTOR MALONE: Just very briefly,  
12 the Chairman had asked earlier that all effort be made  
13 to produce the -- I know Mr. Farris had later referred  
14 to it -- contract and then back on -- let me not say a  
15 contract. I'm not so sure I remember the most recent  
16 request that the Chairman said to produce it.

17 And then I think on Exhibit 25 there  
18 was a lot of conversation and the Chairman had asked  
19 that that be produced -- Exhibit 44. I'm sorry, not  
20 25.

21 Just to remind the parties that you  
22 have plenty of time to work those matters out.

23 MR. FARRIS: Director Malone, I also  
24 mentioned the, you know, the payments on those. I  
25 think I read that into the record. And I would also

1 like those if they're available, the payments which  
2 back those up.

3 CHAIRMAN KYLE: Commissioner Malone,  
4 do you have anything further?

5 DIRECTOR MALONE: No.

6 CHAIRMAN KYLE: Anything further,  
7 Commissioner Greer?

8 DIRECTOR GREER: No.

9 CHAIRMAN KYLE: General Walkup, do  
10 you have any closing comments?

11 MR. WALKUP: Might I just simply make  
12 inquiry with regard to Mr. Barta's testimony, if it is  
13 intended that Mr. Barta is to address anything beyond  
14 what is contained in the testimony that he filed in  
15 March, that -- well, I would just like to go ahead and  
16 get an instruction that he not go beyond that.  
17 Because we have no prefiled testimony from him  
18 supplementing. So even though there's been an  
19 Exhibit A and a cost allocation manual filed since  
20 then --

21 MR. WELCH: I'm absolutely astounded  
22 that Mr. Walkup would make such a comment. After  
23 what's gone on in this proceeding and the leeway we've  
24 given this applicant and the questions that have been  
25 asked on direct, I can't imagine that that comment